

Exhibit 4

Robert A. Baker

December 11, 2003

Boston, MA

1

1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

2

3

Civil Action No. C-1-02-393

4

THE PROCTER & GAMBLE
COMPANY,

5

Plaintiff,

6

v.

7

THE COCA-COLA COMPANY,

8

Defendant.

9

VIDEOTAPED DEPOSITION OF ROBERT A.

10 BAKER, called as a witness on behalf of the

11 Defendant, pursuant to the applicable

12 provisions of the Federal Rules of Civil

13 Procedure, before Jeanette N. Maracas,

14 Registered Professional Reporter and Notary

15 Public in and for the Commonwealth of

16 Massachusetts, at the Offices of Hale and

17 Dorr, LLP, 60 State Street, Boston,

18 Massachusetts, on Thursday, December 11,

19 2003, commencing at 9:25 a.m.

20

21

22

CERTIFIED
COPY

Robert A. Baker

December 11, 2003

Boston, MA

195

1 Q. Do you recall that?

2 MS. FERRERA: Objection.

3 A. I don't recall that specific point, no.

4 Q. If you go back to Exhibit No. 8 for a moment,
5 which is the amendment filed on behalf of
6 David Heckert.

7 A. Yes.

8 Q. And you turn to Page 8, you'll see at the
9 bottom of the page there a discussion
10 concerning the differentiation between the
11 added acid component in Sperti versus the
12 added acid component in the '847 patent.

13 A. Yes.

14 Q. Begins at the last paragraph there, "in
15 addition, Sperti suggests using mostly citric
16 acid and very little malic acid in their
17 extended juice products. Based on the
18 example given in Column 5, Lines 19 through
19 20," which is what we were just looking at,
20 "the Sperti, et al., extended juice products
21 contain at least 99 percent citric
22 acid/citrate combined, and less than one

Robert A. Baker

December 11, 2003

Boston, MA

196

1 percent malic acid." Do you see where I'm
2 reading from?

3 A. Yes.

4 Q. "The examiner should note that the weight
5 ratio of citric acid, malic acid defined in
6 Claim 1," this being for the '847 patent, "is
7 no greater than 90 to 10." Do you see where
8 I was talking about there?

9 A. Mm-hmm.

10 Q. Do you recall reading that before?

11 A. Yes.

12 Q. So what was happening here is that the
13 attorney on behalf of Mr. Heckert was
14 distinguishing the premix citric-malic acid
15 ratio combination from those ingredients
16 added in Sperti?

17 MS. FERRERA: Objection.

18 Q. Did you understand that?

19 MS. FERRERA: Objection.

20 A. Would you repeat that, please?

21 Q. So what was happening here is that the
22 attorney on behalf of Mr. Heckert was

Robert A. Baker

December 11, 2003

Boston, MA

197

1 distinguishing the premix citric acid, malic
2 acid ratio from the added citric acid,
3 citrate combination and malic acid used in
4 Sperti?

5 MS. FERRERA: Objection.

6 A. Is that case, or -- no, that is not the case
7 because the 90-10 ratio applies to the
8 finished product.

9 Q. All right. Well, then, taking your point,
10 basically what was happening was that the
11 '847 invention was being distinguished from
12 Sperti based upon a different ratio of
13 citric-malic acid?

14 A. Only in part. I mean, I think there were
15 other issues they were distinguishing.

16 Q. But with regard to this specific point raised
17 by the examiner?

18 A. That specific point, yes, but there were
19 other differentiations, I think, as well.

20 Q. The examiner had a number of reasons for
21 wanting to reject the patent?

22 A. Differentiations between Sperti and the

Robert A. Baker

December 11, 2003

Boston, MA

202

1 on Page 4 of Exhibit 13?

2 Q. The discussion on Pages 8 and 9 of
3 Exhibit 13 -- Exhibit 8. I'm sorry.

4 A. Let me go back a moment.

5 MS. FERRERA: Take your time.

6 A. (Witness examines document).

7 I apologize for refreshing myself
8 there, but if you would go back to the
9 question again.

10 (Question read)

11 MS. FERRERA: Objection.

12 A. I thought I answered that. The answer is
13 they're not being related to the ratio in the
14 premix, but to the ratio in the completed
15 product.

16 Q. Would you agree that the acid, that the ratio
17 referred to as Sperti which we've been
18 discussing at the bottom of Page 8 and the
19 top of Page 9 there, that at least 99 percent
20 citric acid/citrate combined and less than
21 one percent malic acid ratio refers to the
22 added acids or the acids that are not

Robert A. Baker

December 11, 2003

Boston, MA

203

1 endogenous in the juice product that's being
2 developed in the Sperti patent?

3 MS. FERRERA: Objection.

4 A. No, because it states that the Sperti, et
5 al., extended juice products contain at least
6 99 percent citric acid/citrate combined, not
7 the premix or not the material defined under
8 the ingredients in Column 5 of the Sperti
9 patent.

10 Q. But isn't it the case that the less than 99
11 percent citric acid/citrate combined and less
12 than one percent malic acid ratio is derived
13 from that ingredients list at Column 5
14 beginning at Lines 11 through 20?

15 MS. FERRERA: Objection.

16 A. No. That was my comment before. I don't see
17 that it would be derived from that because
18 the ratio of those two numbers is
19 considerably more than 99 to one.

20 Q. Maybe you can help me with this. The citric
21 acid and sodium citrate are what form that
22 citric acid citrate species; is that right?

Robert A. Baker

December 11, 2003

Boston, MA

206

1 to ask the question again.

2 Q. Did you understand where we were?

3 A. Yes, absolutely. I've been good with this
4 particular question, because it states very
5 clearly on the last line of Page 8 that the
6 Sperti, et al., extended juice products, as I
7 read that, that's talking about the product
8 at the end after the addition of this diluent
9 to the juice, that one can't separate the
10 citric and malic acids of the additives from
11 the juice to which you've added it.

12 Q. What would you expect the citric-malic acid
13 ratio to be in naturally-occurring orange
14 juice?

15 MS. FERRERA: Objection.

16 A. I think that would depend a great deal on the
17 particular variety of juice and a number of
18 other factors. I couldn't give you an
19 approximation other than some citations that
20 we have seen. But as far as an overall, I
21 think it would really depend a great deal on
22 the variety of the fruit, cultural